

Joseph E. Dunne III

Attorney at Law

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July 11, 2000

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JUL 11 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W., Room TW-B204F  
Washington, D.C. 20554

RE: Petition for Rule Making Seeking the Allocation of DTV Channel 26, Tulsa, Oklahoma

Dear Ms. Salas:

Submitted herewith on behalf of Global Education Development, Inc.; Broadcasting for the Challenged, Inc; Faith That Pleases God, Inc.; Family Educational Broadcasting, Inc.; Creative Educational Media Corporation, Inc.; Oral Roberts University; and Community Television Educators, Inc., Jointly, the Applicants, is an original and four copies of their "Petition for Rule Making" seeking the allocation of DTV Channel 26 to Tulsa, Oklahoma.

Should any questions arise concerning this Petition, kindly contact the undersigned Attorney for Global Education Development Inc.

Respectfully Submitted,

**Global Education Development, Inc.  
Broadcasting for the Challenged, Inc.  
Faith That Pleases God Church  
Family Educational Broadcasting, Inc.  
Creative Educational Media Corporation  
Oral Roberts University  
Community Television Educators, Inc.**

By: 

Joseph E. Dunne III

Attorney for Global Education Development, Inc.

JED/A43

xc: Per Attached Certificate of Service  
George Sebastian

No. of Copies rec'd 0+4  
List A B C D E

M M B

Telephone: (970) 385-7312

E-Mail: Lawman@animas.net

Fax: (970) 385-7343

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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JUL 1 1 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In Re Matter of )  
 )  
Amendment of Section 73.606 ) MM Docket No. \_\_\_\_\_  
Table of Allotments ) RM-  
 )  
DTV Allotment to Tulsa, Oklahoma )

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**PETITION FOR RULE MAKING**

Global Education Development, Inc. ("GED"), Broadcasting for the Challenged, Inc. ("BCI"), Faith That Pleases God Church ("FTPGC"), Family Educational Broadcasting, Inc. ("Family"), Creative Educational Media Corporation ("CEMC"), Oral Roberts University ("ORU"), and, Community Television Educators, Inc. ("CTE"), jointly referred to as the "Applicants," by the undersigned counsel for GED, hereby petition the Commission to add a new digital noncommercial television allocation on Channel 26 in Tulsa, Oklahoma, to replace the NTSC noncommercial allocation on channel 63, Tulsa Oklahoma for which all of the Applicants have applied at least three years ago. In support of their Petition, the Applicants show and state as follows.

1. The Applicants are all the applicants for the Commission allocated NTSC channel 63 assigned to Tulsa, Oklahoma.<sup>1</sup> An allotment on channel 63 in Tulsa will soon be absolutely worthless. In the Commission's "Mass Media Bureau Announces Window Filing

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<sup>1</sup>. The file numbers for the Applicants' Tulsa applications are: GED, BPET-BCI, BPET-960101KH; FTPGC, BPET-960101KE; Family, BPET-960927KE; CEMC, BPET-960701KG; ORU, BPET-960621KE; and, CTE, BPET-960903KG).

Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations,” DA 99-2605 (released November 22, 1999), applicants, such as the Applicants here, were afforded an opportunity to seek an alternate DTV or NTSC channel below channel 60 by a date certain which has now extended to July 15, 2000. The Applicants who are the petitioners herein represent all of the mutually exclusive and cut-off applicants for NTSC channel 63, Tulsa, Oklahoma, thereby satisfying the Commission’s requirement that all competing applicants for the same NTSC channel join in endorsing any new proposal for a channel allocation to replace an NTSC channel over 60 for which they applied.

2. The Applicants proposal proposes the assignment of a DTV channel, channel 26, to Tulsa. According to the Applicant’s consulting engineer, *see* Exhibit 1, a thorough channel search has revealed that no other channel may be allocated to Tulsa, either analog or digital, except the DTV channel 26 proposed herein, consistent with the Commission’s analog spacing requirements set forth in section 73.610 or the DTV interference criteria set forth in section 73.623(c). The allocation proposed herein is not a “clean” allocation---the proposed allotment will require the restriction of the allocation to a specific tower located at: 36 04' 56", 98 45'27"; and specific operating limitations. *See* Exhibit 1, pp. 1-2. The site proposed is available to all applicants should they be awarded the construction permit, and the site is suitable for the construction of the facilities proposed herein and to which the proposed allotment would be limited.

3. The Applicant’s proposal does, however, create a technical and legal issue that awaits resolution by the Video Services Division. The Engineering Statement is correct in its assertion that the proposed facility “...is in accordance with the terms of the aforementioned public notice.” However, since the publication of the Public Notice

Congress has adopted the Community Broadcasters Protection Act of 1999 ("CPBA") which mandates the creation of a new class of television station, the Class A Television Station, for which existing LPTV licensees may qualify if they meet certain eligibility criteria established by the CPBA. One of the attributes of the newly created Class A authorization is that the station is protected from interference which would be created by an after-filed DTV rule making petition unless that rule making petition were filed to correct a technical problem caused by existing DTV allocations. *See* Report and Order in MM. Docket No. 00-10, FCC 00-115, at para. 50 (released April 4, 2000) (Hereinafter "Class A Report and Order"). Class A stations are to be protected from the date they file a timely filed certification that the station is eligible to apply for Class A status. 47 U.S.C. Section 336 (f)(1)(D).

4. An LPTV facility, KLOT-LP, licensed to the Equity Broadcasting Corporation ("EBC"), timely filed a certification of Class A status on January 28, 2000. On June 2, 2000, the Commission granted KLOT-LP eligibility to apply for Class A status. *See* "Certificates of Eligibility for Class A Television Station Status," DA 00-1224, page 10 (released June 2, 2000. The Applicants' proposed allocation would not protect KLOT-LP from interference, in fact, the Applicants' petition seeking to operate on channel 26 and the facilities which would be built were the petition granted, would entirely overlap the entire area served by channel 25. On information and belief, then, the Applicants tendered Petition likes would cause interference to the facilities of a station which has certified its Class A eligibility.

5. A closer review of the facts, however, shows that EBC submitted a bogus certification that KLOT-LP was qualified to be a Class A licensee. The Applicants<sup>2</sup> have filed an informal objection against the Class A certification filed by EBC because the Applicants argue that EBC is not qualified to be a Class A licensee, either under the terms of the CPBA which established the qualifications for Class A licensees, or under the adopted Commission rules implementing the Congressional mandate in the CPBA. The CPBA provides that one of the criterion under which a licensee qualifies to be a Class A licensee is that it has broadcast "...at least three hours per week of programming that was produced within the market area served by such station." 47 U.S.C. section 336(f)(2)(A)(i)(II). The Commission has defined the market area in which such local programming must be produced "... the area within the Grade B contour determined by the Class A station's antenna height and power." Class A Report and Order, page 9, para. 16. The alleged basis for EBC's certification that KLOT-LP is contained in its Class A certification filed on January 28, 2000, Exhibit 1, where EBC states:

The certification that KLOT-LP carries three hours or more of locally produced programming per week is based on the Video Jukebox format, which involves music videos which are selected by local viewers who call and make their selection via telephone. *Thus content selection throughout the day is locally made.* (Emphasis supplied) KLOT-LP Class A Certification, Exhibit 1, page 3.

The Applicants' and EBC's arguments in their Informal Reply, Opposition, and Reply are set out in Exhibits 2 through 4 of this Petition.

6. Nor does the fact that the Commission has described KLOT-LP as eligible to apply for Class A status mean that the Commission has made a determination concerning the

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<sup>2</sup>. With respect to any objections filed against Equitable Broadcasting Corporation's Class A certification, the Applicants do not include ORU.

merits of EBC's claim of eligibility for Class A status. Due to the overwhelming workload placed on the Commission staff caused by the implementation of the CPBA and compliance with its strict schedule, the Commission staff has determined not to make any judgements or determinations of the merits of a licensee's claim that it is qualified to be a Class A licensee until that licensee files a Class A application.<sup>3</sup> At that time the Commission will make a determination on the merits concerning any questions raised about a licensee's qualifications to be a Class A licensee.<sup>4</sup> Therefore, KLOT-LP's qualifications as a Class A licensee still remain to be determined by the Commission, and, at present the Applicants cannot know whether EBC will even file a Class A application, much less, with certainty, how the Commission will act on a KLOT-LP Class A application if it ever submits one. If EBC ever files a Class A application for KLOT-LP the Applicants will certainly vigorously oppose any such application

7. As argued in the enclosures, the public interest is seemingly more fully served by advancing the opportunity of Tulsa to receive a full power issue-responsive educational broadcast service which is obligated under Commission policy to provide some local programming compared to an LPTV station which would serve substantially fewer people in a greatly reduced area and provide non-local programming which includes no issue-responsive programming but which does provide programming which is duplicated on TV, cable and satellite program offerings already available to Tulsa residents.

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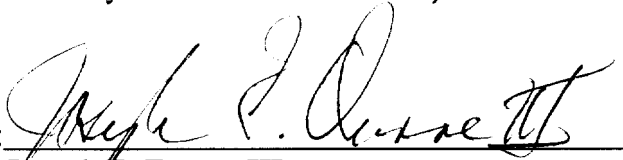
<sup>3</sup>. An exception to this rule would be licensees which could easily be disqualified as Class A licensees because they are translator stations.

<sup>4</sup>. This precis of Commission policy is a summary of the results of a telephone conversation on June 20, 2000 with Hossein Hashemzadeh, Supervisory Engineer dealing with Low Power Television stations.

**WHEREFORE, the foregoing considered,** the Applicants for NTSC channel 63 in Tulsa respectfully request that the Commission allocate DTV channel 26, with the specific power and site limitations described herein, to Tulsa , Oklahoma.

Respectfully Submitted,

**Global Education Development, Inc.  
Broadcasting for the Challenged, Inc.  
Faith That Pleases God Church  
Family Educational Broadcasting, Inc.  
Creative Educational Media Corporation  
Oral Roberts University  
Community Television Educators, Inc.**

By:   
Joseph E. Dunne III  
Attorney for Global Education Development, Inc.

Joseph E. Dunne III  
*Law Offices of Joseph E. Dunne III*  
P.O. Box 9203  
Durango, CO 81302-9203  
(970) 385-7312

## **CERTIFICATE OF SERVICE**

I, Shari Lynn Atole, a paralegal in the Law Offices of Joseph E. Dunne III, hereby certify that I have mailed a copy of the foregoing "Petition for Rule Making " on this 11th day of July, 2000, first-class postage prepaid, to the following:

Jason S. Roberts, Esq.  
Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Avenue, N.W.  
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Washington, D.C. 20036-3101  
Counsel for Equity Broadcasting Corporation

Bradford D. Carey, Esq.  
Hardy & Carey L.L.P.  
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Metairie, LA 70005-3027  
Counsel for Oral Roberts University

Cary S. Tepper, Esq.  
Freret Imlay & Tepper, P.C.  
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Rev. Carlos Ortiz  
Faith that Pleases God Church  
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Robert L. Olender, Esq.  
Koerner & Olender, P.C.  
5809 Nicholson Lane  
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North Bethesda, MD 20852  
Counsel for Community Educational Television, Inc.

By: Shari L. Atole  
Shari Lynn Atole

**PETITION FOR RULE MAKING  
DTV CHANNEL 63, TULSA, OK**

**EXHIBIT 1**

**ENGINEERING STATEMENT**

EXHIBIT A

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of the following applicants for NTSC Channel 63 assignment in Tulsa, Oklahoma:

GLOBAL EDUCATIONAL DEVELOPMENT, INC. (BPET-960917KE)  
FAMILY EDUCATIONAL BROADCASTING, INC. (BPET-960927KE)  
FAITH THAT PLEASES GOD CHURCH (BPET-961001KE)  
BROADCASTING FOR THE CHALLENGED, INC. (BPET-961001KH)  
CREATIVE EDUCATIONAL MEDIA CORPORATION, INC. (BPET-960701KG)  
COMMUNITY TELEVISION EDUCATORS, INC. (BPET-960930KG)  
ORAL ROBERTS UNIVERSITY (BPET-960621KE)

in support of their joint Petition for Rulemaking to substitute noncommercial DTV Channel 26 for noncommercial NTSC Channel 63 in Tulsa, Oklahoma.

According to the Commission's Public Notice DA 99-2605, "Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations," released November 22, 1999, applicants for NTSC allotments on Channels 60-69 have been afforded an opportunity to find an alternate NTSC or DTV channel below Channel 60. Our detailed channel search reveals that no NTSC replacement channel is available in Tulsa that meets the analog spacing requirements of §73.610, as well as the DTV interference criteria of §73.623(c). However, we have determined that DTV Channel 26 can be used in Tulsa from a specific site and with specific operating parameters.

The proposed site, at 36° 04' 56", 95° 45' 27", is plotted in Exhibit B. A 94-meter nonbroadcast communications tower exists there. For the purposes of our interference

EXHIBIT A

studies, we assumed that an Andrew ALP16M2-HSOC directional antenna would be side-mounted on this tower, as shown in Exhibit C. The proposed effective antenna height is 295 meters AMSL, and the main-lobe maximum ERP is 200 kw. Proposed operating parameters are listed in Exhibit D, and Exhibit E provides the antenna radiation pattern data for the proposed antenna, which is to be oriented at 300° true. Exhibit F is a tabulation of terrain and contour data for the proposed facility.

The predicted 41 db $\mu$  contour is plotted in Exhibit G. As shown, the entire community of Tulsa is contained within the proposed 41 db $\mu$  contour, as required by §73.623(c)(1) of the Rules. Exhibit H is an interference study, which concludes that the proposed facility meets the requirements of §73.623(c)(2) of the Rules with respect to both NTSC and DTV facilities and is therefore in accordance with the terms of the aforementioned public notice.

It is thus requested that the FCC delete analog Channel 63 in Tulsa, Oklahoma, by changing §73.606(b) of its Table of [NTSC] Allotments, as follows:

<u>Community</u>	<u>Present Allotments</u>	<u>Proposed Allotments</u>
Tulsa, Oklahoma	2+, 6+, 8-, *11-, 23, 41+, 47, 53, *63	2+, 6+ 8-, *11-, 23, 41+, 47, 53

Further, we request that the Commission add Channel 26 in Tulsa, Oklahoma, to its §73.622(b) Digital Television Table of Allotments, as follows:

<u>Community</u>	<u>Present Allotments</u>	<u>Proposed Allotments</u>
Tulsa, Oklahoma	22, *38, 42c, 48c, 49, 55, 56, 58	22, *26, *38, 42c, 48c, 49, 55, 56, 58

EXHIBIT A

I declare under penalty of perjury that the foregoing statements and the attached exhibits, which were prepared by me or under my immediate supervision, are true and correct to the best of my knowledge and belief.

KEVIN T. FISHER

June 30, 2000

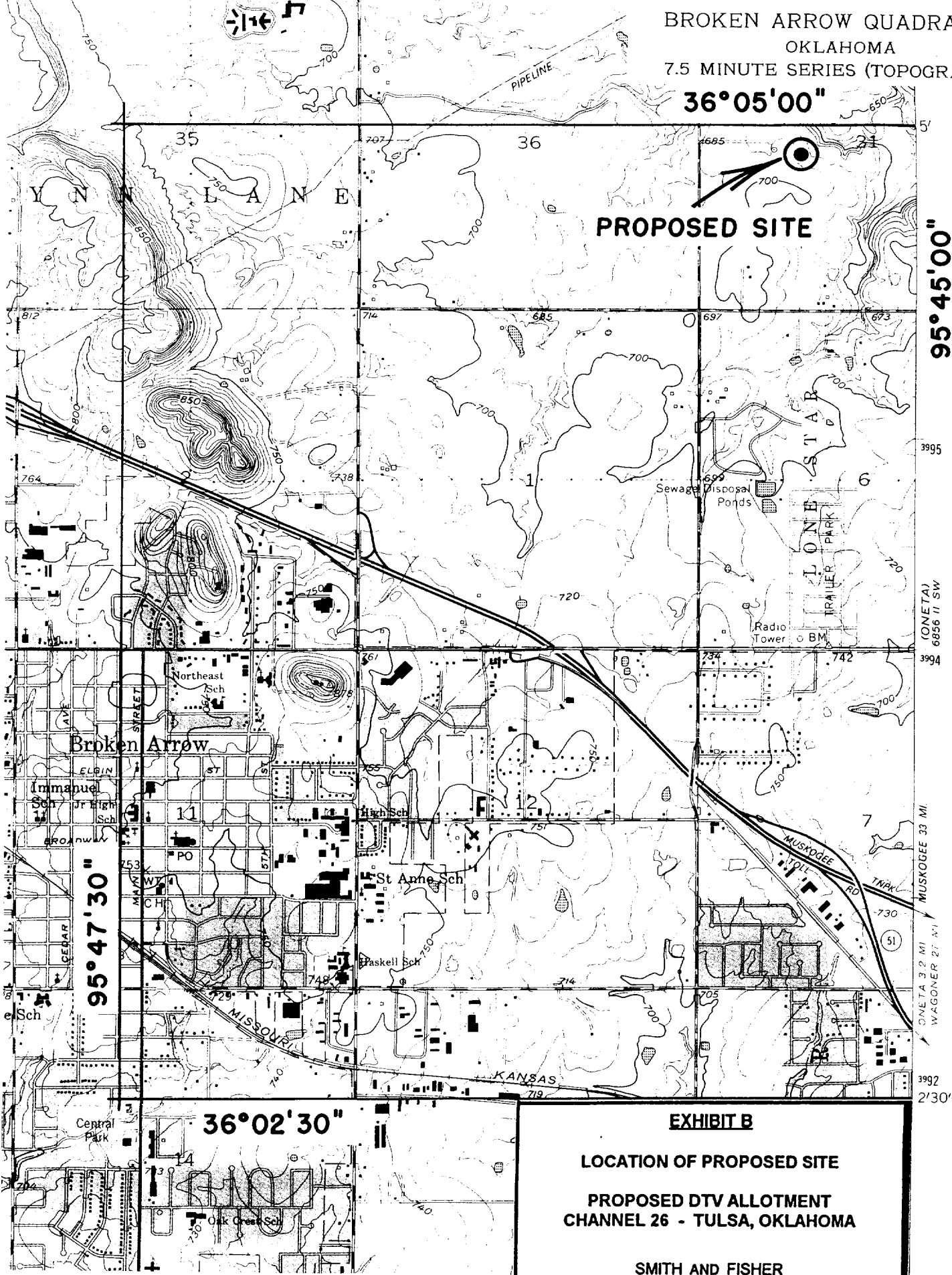
BROKEN ARROW QUADRANGLE  
OKLAHOMA  
7.5 MINUTE SERIES (TOPOGRAPHIC)

6856 II  
(CAT)

36°05'00"

PROPOSED SITE

95°45'00"

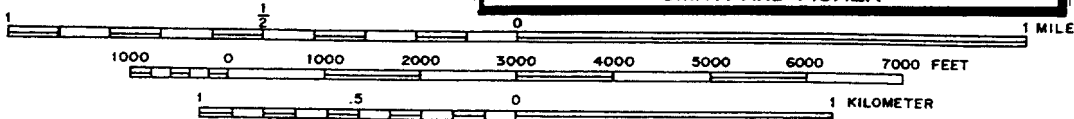


**EXHIBIT B**

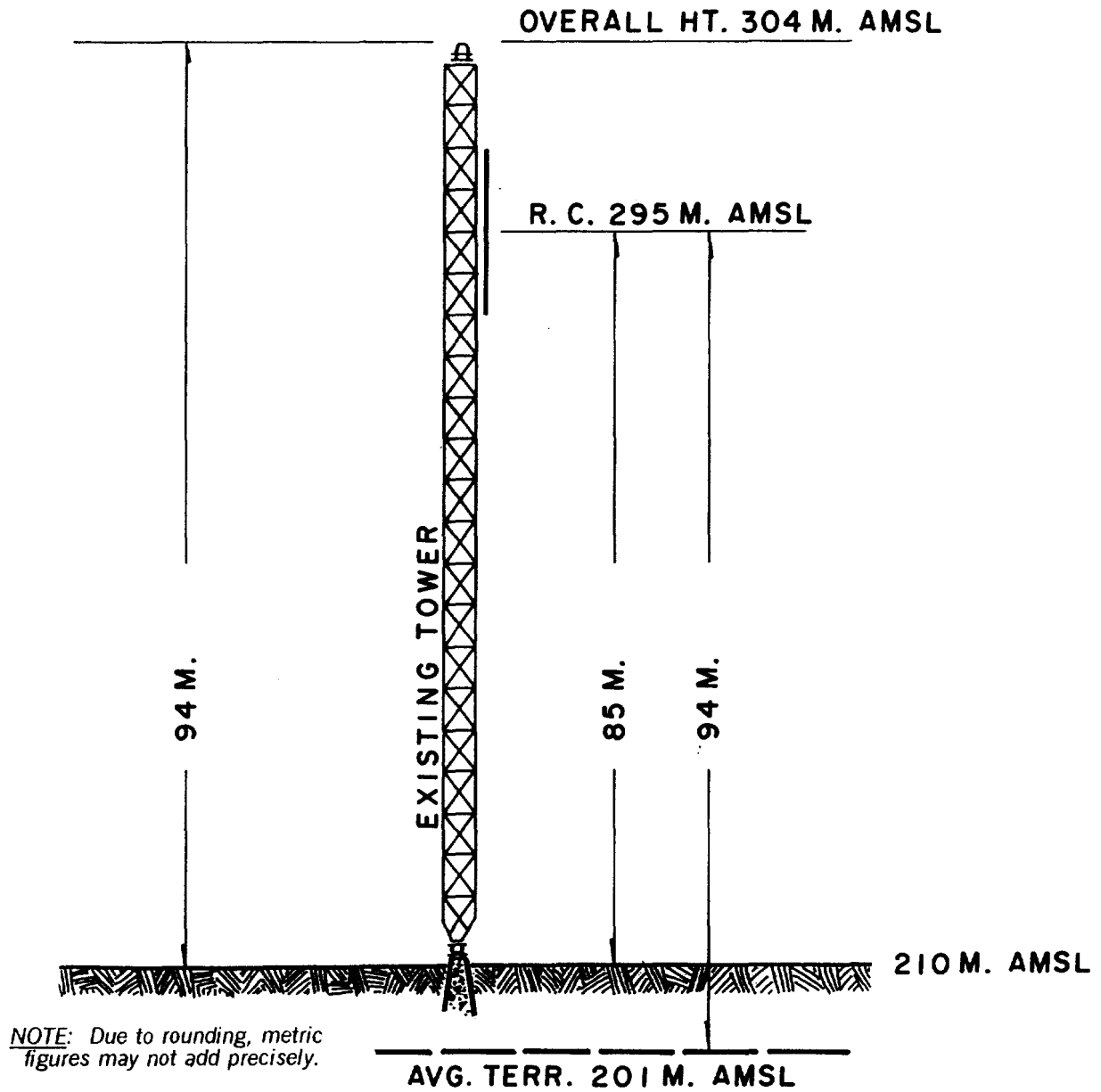
**LOCATION OF PROPOSED SITE**

**PROPOSED DTV ALLOTMENT  
CHANNEL 26 - TULSA, OKLAHOMA**

**SMITH AND FISHER**



NOT TO SCALE



SITE COORDINATES:

36° 04' 56"

95° 45' 27"

EXHIBIT C

ELEVATION OF ANTENNA STRUCTURE

PROPOSED DTV ALLOTMENT  
CHANNEL 26 - TULSA, OKLAHOMA

SMITH AND FISHER

EXHIBIT D

## PROPOSED OPERATING PARAMETERS

PROPOSED DTV ALLOTMENT  
CHANNEL 26 - TULSA, OKLAHMA

Channel Number:	26
Zone:	2
Site Coordinates:	36-04-56N 95-45-27W
Antenna Structure Registration Number:	1010821
Tower Site Elevation (AMSL):	210 meters
Overall Tower Height Above Ground:	94 meters
Overall Tower Height Above (AMSL):	304 meters
Effective Antenna Height Above Ground:	85 meters
Effective Antenna Height (AMSL):	295 meters
Average Terrain Elevation (2-10 miles):	201 meters
Effective Antenna Height Above Average Terrain:	94 meters
Antenna Make and Model:	Andrew ALP16M2-HSOC
Orientation:	300° T
Electrical Beam Tilt:	0.5°
Polarization:	Horizontal
Effective Radiated Power (main-Lobe, maximum):	200 kw



## ANTENNA RADIATION VALUES

PROPOSED DTV ALLOTMENT  
CHANNEL 26 - TULSA, OKLAHOMA

<u>Azimuth</u> <u>(° T)</u>	<u>Relative</u> <u>Field</u>	<u>ERP</u> <u>(dbk)</u>	<u>Azimuth</u> <u>(° T)</u>	<u>Relative</u> <u>Field</u>	<u>ERP</u> <u>(dbk)</u>
0	0.82	21.3	180	0.60	18.6
10	0.77	20.7	190	0.61	18.7
20	0.72	20.1	200	0.63	19.0
30	0.67	19.5	210	0.67	19.5
40	0.63	19.0	220	0.72	20.1
50	0.61	18.7	230	0.77	20.7
60	0.60	18.6	240	0.82	21.3
70	0.61	18.7	250	0.87	21.8
80	0.62	18.8	260	0.92	22.3
90	0.64	19.1	270	0.95	22.6
100	0.66	19.4	280	0.98	22.8
110	0.67	19.5	290	0.99	22.9
120	0.68	19.7	300	1.00	23.0
130	0.67	19.5	310	0.99	22.9
140	0.66	19.4	320	0.98	22.8
150	0.64	19.1	330	0.95	22.6
160	0.62	18.8	340	0.92	22.3
170	0.61	18.7	350	0.87	21.8

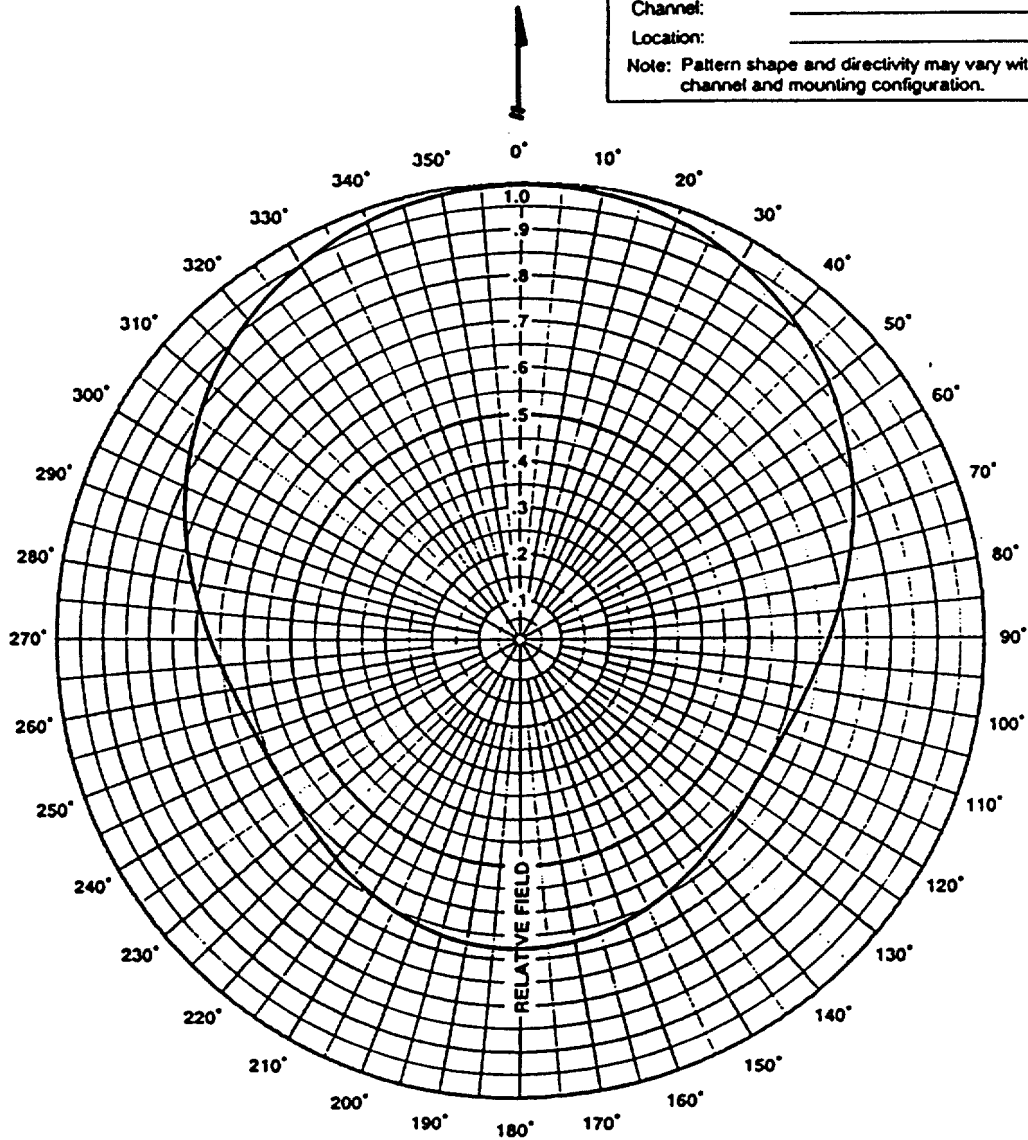


# ANDREW AZIMUTH PATTERN

Type: ALP-OC  
Directivity: Numeric 1.70 dB 2.30  
Peak(s) At: \_\_\_\_\_  
Polarization: \_\_\_\_\_  
Channel: \_\_\_\_\_  
Location: \_\_\_\_\_

Note: Pattern shape and directivity may vary with channel and mounting configuration.

300° T.



NOTE: ANTENNA WILL BE MOUNTED SUCH THAT  
0° ON GRAPH WILL BE ORIENTED AT 300° T.

## EXHIBIT E-2

### ANTENNA AZIMUTH PATTERN

PROPOSED DTV ALLOTMENT  
CHANNEL 26 - TULSA, OKLAHOMA

SMITH AND FISHER

EXHIBIT F

## ELEVATION AND CONTOUR DATA

PROPOSED DTV ALLOTMENT  
CHANNEL 26 - TULSA, OKLAHOMA

<u>Az.</u> <u>(° T)</u>	<u>Avg. Elv. AMSL</u> <u>2 to 10 Miles</u> <u>meters*</u>	<u>Effective</u> <u>Ant. Ht. AAT</u> <u>meters</u>	<u>ERP</u> <u>(dbk)</u>	<u>Distance to Predicted</u> <u>Digital Contour (41 dbμ)</u> <u>km.</u>
0	192	103	21.3	64.0
45	192	103	18.9	61.6
90	184	111	19.2	62.7
135	209	86	19.5	60.1
180	196	99	18.6	60.9
225	200	95	20.4	62.2
270	220	75	22.6	61.5
315	213	82	22.9	62.8
303**	211	84	23.0	63.3

Height of radiation center above mean sea level	295 meters
Height of average terrain above mean sea level	201 meters
Height of radiation center above average terrain	94 meters
Effective radiated power, main lobe, maximum	23.0 dbk, 200 kw

Geographic Coordinates

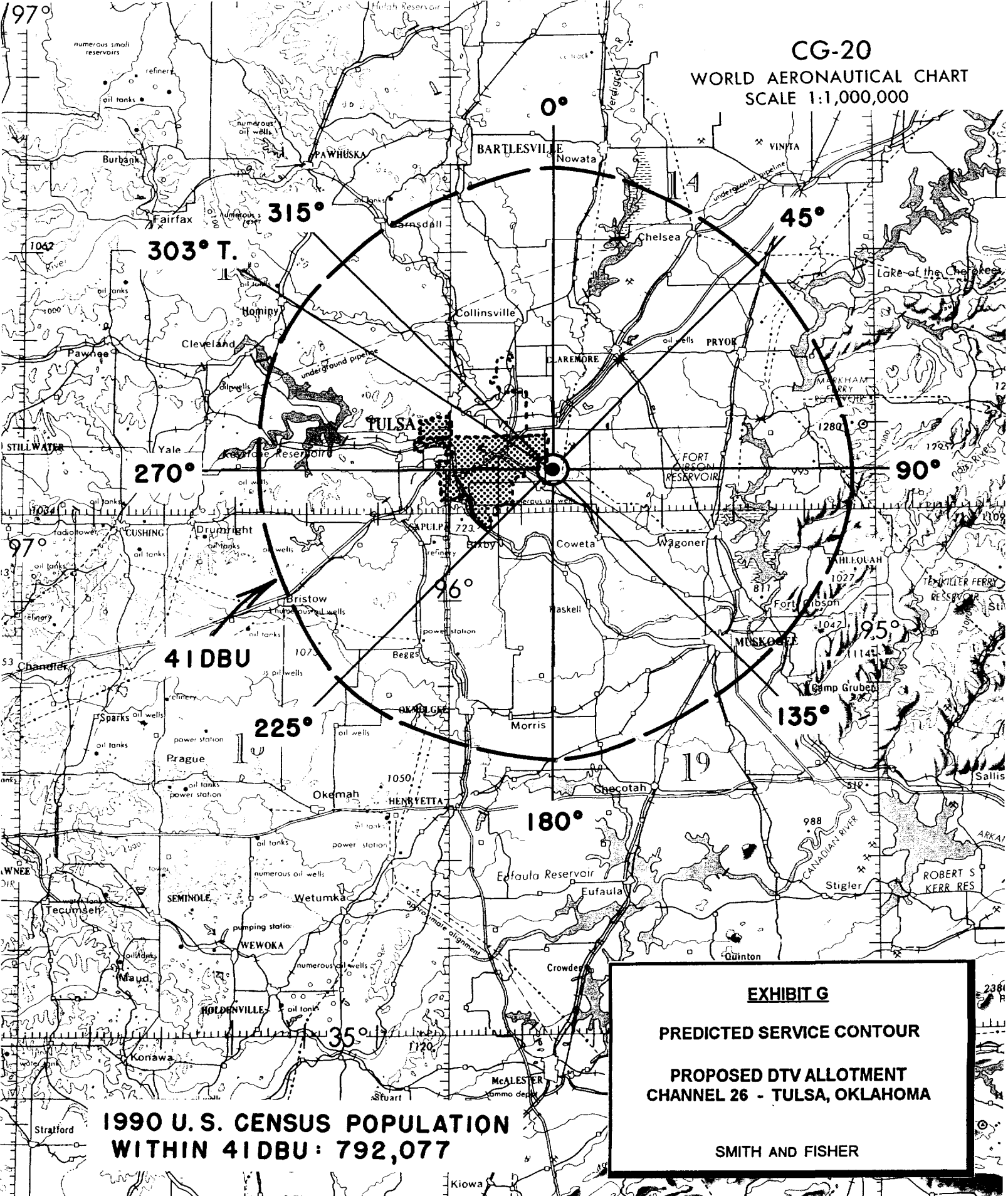
N 36° 04' 56" W 95° 45' 27"

*\*Source of terrain data: Defense Mapping Agency 3-second terrain database.**\*\*Radial through Tulsa – not included in average.*

197°

CG-20

WORLD AERONAUTICAL CHART  
SCALE 1:1,000,000



## ALLOCATION AND INTERFERENCE STUDY

PROPOSED DTV ALLOTMENT  
CHANNEL 26 - TULSA, OKLAHOMA

An interference study was conducted using the operating parameters of the facility described herein to determine if it meets the FCC's *de minimis* interference requirements of Section 73.623(c)(2) of the Commission's Rules. Specifically, the proposed facility may not cause more than two percent interference to the service population of a DTV or NTSC facility, nor can its interference contribution result in an excess of 10 percent total DTV interference to the service population of any DTV or NTSC facility.

The service area of a DTV station is defined as that which is calculated using the Longley-Rice propagation model to receive a signal of 41 db $\mu$  or greater and lies within the predicted 41 db $\mu$  contour of the station using the F(50,90) curves, the station's effective radiated power, and 2-10 mile terrain averages along each radial.

In evaluating the interference effect of this proposal, we have relied upon the V-Soft Communications "Probe" computer program, which has been found generally to mimic the FCC's program. Changes in interference caused by the proposed allotment facility to other pertinent stations are tabulated in Exhibit H-2.

As indicated, the proposed allotment would not contribute more than two percent DTV interference to the service population of any potentially affected NTSC or DTV station. In addition, this proposal does not result in any NTSC or DTV station receiving more than ten percent total DTV interference to viewers living within the station's authorized or proposed service area.

Therefore, this proposal meets the FCC's *de minimis* interference standards as defined in Section 73.623(c)(3) of the Commission's Rules.

EXHIBIT H-2

*DE MINIMIS* INTERFERENCE ANALYSIS

PROPOSED DTV ALLOTMENT  
CHANNEL 26 - TULSA, OKLAHOMA

NTSC FACILITIES

				INTERFERENCE LOSSES (POPULATION)								
Call Sign	City, State	Ch.	Grade B Population F(50,50)	NTSC & DTV				NTSC & DTV			Proposal Contribution	% <sup>2</sup>
				NTSC Only	Without Proposal	Unmasked DTV	% <sup>1</sup>	With Proposal	Unmasked DTV	% <sup>1</sup>		
KOZJ(CP)	Joplin, MO	26	294,302	1,432	1,681	249	< 0.1	5,369	3,937	1.3	3,688	1.3
KOZJ(Impl.)	Joplin, MO	26	226,985	0	77	77	< 0.1	3,157	3,157	1.4	3,080	1.4
KOZJ(Lic.)	Joplin, MO	26	218,306	0	0	0	0	2,114	2,114	1.0	2,114	1.0
Impl.	Enid, OK	26	1,038,229	454,770	457,414	2,644	0.3	458,437	3,667	0.4	1,023	0.1

DTV FACILITIES

				INTERFERENCE LOSSES (POPULATION)								
Call Sign	City, State	Ch.	NTSC/DTV <sup>3</sup> Grade B Pop. Longley-Rice	NTSC	NTSC & DTV	Unmasked		NTSC & DTV	Unmasked		Proposal	
				Only	Without Proposal	DTV	% <sup>1</sup>	With Proposal	DTV	% <sup>1</sup>	Contribution	% <sup>2</sup>
KTEN-DT	Ada, OK	26	444,180	960	6,409	5,449	1.2	7,001	6,041	1.4	592	0.1

<sup>1</sup> Cannot exceed 10% of Grade B Population.

<sup>2</sup> Cannot exceed 2% of Grade Population.

<sup>3</sup> Cannot exceed 2% of Grade Population.

**PETITION FOR RULE MAKING  
DTV CHANNEL 63, TULSA, OK**

**EXHIBIT 2**

**APPLICANTS' INFORMAL OBJECTION**

Joseph E. Dunne III  
Attorney at Law  
P.O. Box 9203  
Durango, CO 81302-9203

**COPY**

April 25, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W. Room TW-B204F  
Washington, D.C. 20554

**RECEIVED**

**APR 25 2000**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

RE: Informal Objection to the Class A Certification Filed By  
Equity Broadcasting Corporation on January 28, 2000

Dear Ms. Salas:

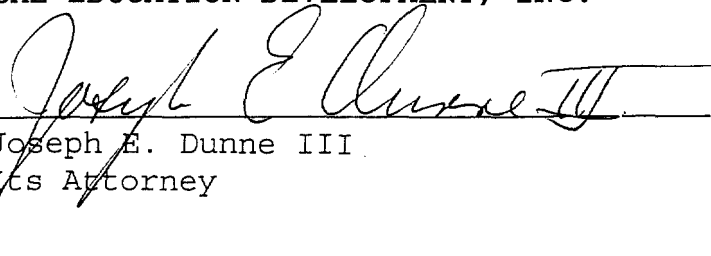
Transmitted herewith on behalf of six of the seven applicants for NTSC channel 63, Tulsa, Oklahoma (the "Applicants") is an original and four copies of an Informal Objection filed against the "Statement of Eligibility for Class A Low Power Television Station Status" submitted on January 28, 2000 by Equity Broadcasting Corporation, the licensee of KLOT-filed pursuant to section 73.3584 of the Commission's Rules and Regulations.

The Applicants respectfully Request that the enclosed copy of this Informal Objection, marked "COPY," be stamped as received and returned to the undersigned in the enclosed stamped self-addressed envelope.

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully Submitted,

GLOBAL EDUCATION DEVELOPMENT, INC.

By:   
Joseph E. Dunne III  
Its Attorney

JED:A43

Enclosure

xc: As Per Attached Certificate of Service

Telephone: (970) 385-7312

E-Mail: Lawman@animas.net

Fax: (970) 385-7345



BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

**In Re**

**Equity Broadcasting Corporation**

**Statement of Eligibility For Class A  
Low Power Television Station Status**

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**TO: The Chief, Mass Media Bureau**

**INFORMAL OBJECTION**

Broadcasting for the Challenged, Inc.; Faith That Pleases God Church; Family Educational Broadcasting, Inc.; Creative Educational Media Corporation, Inc.; Global Education Development, Inc.; and, Community Television Educators, Inc. (Jointly referred to as “the Applicants”), six of the seven pending applicants<sup>1</sup> for NTSC channel 63 in Tulsa, Oklahoma, by the undersigned counsel for Global Education Development, Inc., hereby submit this “Informal Objection” to the “Statement of Eligibility for Class A Low Power Station Status” filed by Equity Broadcasting Corporation (hereinafter referred to as “EBC”), licensee of low power television station KLOT-LP, Tulsa, Oklahoma, (hereinafter referred to as “KLOT-LP” or “the Station). As grounds for their Informal Objection, the Applicants show and state as follows.

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<sup>1</sup>. The file numbers of the respective applicants follow: Broadcasting for the Challenged, Inc. (BPET-960101KH); Faith That Pleases God Church (BPET-960101KE); Family Educational Broadcasting, Inc. (BPET-960927KE); Creative Educational Media Corporation, Inc. (BPET-960701KG); Global Education Development, Inc. (BPED-960917KE); and, Community Television Educators, Inc. (BPET-960903KG).

## **I. The Applicants**

1. The Applicants identified above are all applicants for NTSC channel 63, Tulsa, Oklahoma, filed at various times during 1996. Since the channel 60-69 are to be withdrawn from use by television stations in the near future, the Applicants, whose applications have been on file for over three years, will have no channel for which they may apply. All Applicants have invested substantial resources in researching the market and in preparing and filing their applications. To permit applicants such as the Applicants here to seek a channel on which they might continue to apply for a Tulsa allocation the Commission issued a Public Notice, DA 99-2605 (released November 22, 1999) announcing a filing window for, among other things, "the filing of petitions for rule making seeking a new channel below 60 for those applicants with pending applications for new full service NTSC television stations on channels 60-69..." All of the applicants for NTSC channel 63 in Tulsa have agreed, in accordance with the terms of the Public Notice, to jointly petition for a new channel for Tulsa.

2. The Applicant's consulting engineer, after a full study of the spectrum available for a Tulsa applicant, concluded that there is no NTSC channel which might be assigned to Tulsa consistent with the Commission's rules. His research did reveal, however, that a DTV channel may be assigned to Tulsa with specific site and specific operating parameters. *See, Exhibit A, Verified Statement of Kevin Fisher.* Mr Fisher's study showed that two channels could not be allocated to Tulsa consistent with Commission rules, and that there was only one channel which could be assigned to Tulsa, but that its allocation required specific site and operating parameters.

3. Subsequent to the first channel study, however, the Commission took two actions which have complicated the Applicant's channel study. The first was the Commission's Public Notice, 00-546 (released March 9, 2000) which postponed the deadline for filing petitions in response to the Commission's November 29, 1999 Public Notice until July 15, 2000. This Public Notice requires the Applicants to protect DTV maximization applications. The second Commission action was its adoption of its Report and Order in MM Docket No. 00-10, FCC 00-115 (released April 4, 2000) (hereinafter referred to as the "Class A Report and Order") in which the Commission created a new Class A Low Power Television Service. Among the ruled which the Commission adopted for its new television service was requiring NTSC station applications which had not yet proceeded to the final stage of processing prior to grant to protect the 74 dBu contour of Class A television stations. Moreover, this protection was to extend from the date the LPTV licensee's Class A certification is filed with the Commission until the Commission takes final action with respect to the licensee's Class A application.

3. LPTV station KLOT-LP, Tulsa, Oklahoma, licensed to EBC, timely filed a certification of Class A status on January 28, 2000. *See, Exhibit B, Public Notice of KLOT-LP's Class A Certification.* Upon information and belief the Applicants contend that their proposed Rule Making petition would provide interference within the authorized and protected contours of KLOT-LP's construction permit for channel 25, BMPTTL-960516MC. Given the crowded spectrum in the area, however, KLOT-LP's Class A certification will reduce the channels available for allocation to Tulsa for which the Applicants may apply to zero. KLOT-LP's Class A certification therefore reduces the Applicants' long standing applications for a full power television station to serve Tulsa, in which they have invested so much, to a nullity.

## II. KLOT-LP's Statement of Eligibility

4. KLOT-LP's timely filed certification certified that it had fulfilled all three statutory criteria for Class A eligibility, including the criterion that it had broadcast "...at least three hours per week of programming that was produced within the market area served by such station." 47 U.S.C. section 336(f)(2)(A)(i)(II). KLOT-LP's Statement of Eligibility is included in *Exhibit C*, and includes the alleged basis for its certification:

The certification that KLOT-LP carries three hours or more of locally produced programming per week is based on the Video Jukebox format, which involves music videos which are selected by local viewers who call and make their selection via telephone. *Thus content selection throughout the day is locally made.* (emphasis supplied) Exhibit C, page 3.

It should be emphasized, however, that EBC makes no representations that any of the programming broadcast by the Station is locally produced, i.e., produced, originated, or made within the Tulsa area, only that "...content selection throughout the broadcast day is locally made." *Id.*

## III. Argument

### A. Section 336 Requires That "Local Programming" Be "Produced in the Market Area"

5. The language of 47 U.S.C. section 336(f), added by the Community Broadcasters Protection Act of 1999" (hereinafter referred to as the "CPBA") is neither ambiguous or unclear, nor does it admit to a number of different or conflicting meanings. The clear meaning of "...programming produced within the market area served by such station" is that to qualify as "local

programming” pursuant to the statute the “local programming” must be produced, originated or made within the geographical limits of the station’s “market area.” It is an elementary rule of statutory construction that those given the responsibility for interpreting or implementing the statute must give effect to the clear and unambiguous terms of the law. Such is the case here.

6. That the Commission meant “produced” to mean “made” or “originated” in its Class A Report and Order is clear from the words of the report and order itself. In the Class A Report and Order the Commission stated that “...LPTV stations must have broadcast an average of at least three hours per week of programming *produced within the “market area” served by the station*” (emphasis supplied), para. 16, p. 9. In defining the term “Market Area” as used in section 336(f)(2)(A)(i)(II) the Commission stated that “...[w]e instead will expand our definition of “market area” to encompass the area within the Grade B contour determined by the Class A station’s antenna height and power, which encloses a larger area than that of an LPTV station’s protected service contour.” (footnote omitted) This definition of “Market Area” in the rules makes no sense if “produced” as used in the statute and the Commission’s new rules means something other than “made” or “originated” within the specific geographical boundaries specified in the rules.

7. In another instance the Commission showed what it means by “produced” or “production” in defining “Local Program Origination” in the new rules for the Low Power FM radio service adopted in the Commission’s Report and Order in MM Docket No. 99-25, Fcc 00-19 (released January 27, 2000 as follows”...[f]or the purposes of this criterion[Local Program Origination] local origination is the *production of programming* within 10 miles of the proposed antenna

site.” (emphasis supplied) (Newly adopted rule section 73.852, “Selection Procedure for Mutually Exclusive LPFM Applications.”).

8. It is clear, therefore, that to qualify as “local programming” under the CPBA the programming must be “originated” or “made within” the specific geographical boundaries of the market area, and it is not programming “...whose content selection throughout the day is locally made.” In fact, given this broad definition almost any programming broadcast is determined by ratings and local program preferences. The CPBA does not purport to substitute ratings or program preferences for local programming produced within the station’s service area.

9. KLOT-LP’s certification does not, therefore, purport to apply to programming produced within a specific geographic boundary comprising the Station’s market area. Accordingly, KLOT-LP’s “Statement of Eligibility for Class A Low Power Television Status” does not comply either with the CPBA or the Commission’s rules concerning the broadcast of the local programming necessary for eligibility for Class A status. KLOT-LP’s Class A certification is, therefore, simply bogus.

## **B. The Public Interest Does Not Require a Broader Definition of “Local Programming”**

### **In This Instance**

10. While Section 336(f)(2)(B) provides that the Commission may vary the Class A eligibility standards if it determines that “the public interest, convenience and necessity would be served by treating the station as as a qualifying low-power television station...,” it is clear that its conception of the public interest is not broad enough to accept KLOT-LP’s bogus Class A

certification as a substitute for the real thing. In its Class A Report and Order the Commission very explicitly stated that it would waive the statutory requirements for Class A eligibility only in extraordinary and compelling circumstances. “We will allow deviation from the strict statutory eligibility criterion only where such deviations are insignificant or when we determine that there are compelling circumstances, such that in light of those compelling circumstances, equity demands such a deviation.” Class A Report and Order, para. 33, p. 15. Clearly, relaxing the statutory eligibility criteria to accept as “local programming” programming which is not produced anywhere near the Station’s “market area,” however defined, is not an “insignificant” deviation from the “strict statutory eligibility criteria” within any reasonable meaning of those terms.

11. Moreover, EBC has no claim on the Commission’s equitable powers. EBC chose its program format, presumably to maximize its financial return. There is nothing within the Video Jukebox format which inherently prohibits the broadcast of local programming, such as, for example, the broadcast of locally produced music videos. EBC’s failure to broadcast genuinely “local programming” as defined by the CPBA was the result of its own conscious programming choices, exercised over the several years it has been a Commission licensee.

12. In the legislative history of the CPBA Congress made clear that one of the primary reasons for the legislation was LPTV stations ability to provide “local, over-the-air programming” to viewers, particularly in rural markets. HR Report 106-334, p. 4. If the provision of “local, over-the-air programming” is the primary test of the public interest in the protection of Class A stations then clearly KLOT-LP fails this most basic test. KLOT-LP provides no local

programming at all, and, in fact, provides no programming that is not duplicated on several programming programming services generally available on cable and home satellite systems, such as MTV and VH-1. Other services, such as BET, provide a substantial amount of music video programming as well. The station apparently does not provide a shred of local news, public affairs, or other locally-oriented programming which the *sine qua non* of a licensee's service obligation to treat the problems, needs and interests of the community. In this regard, any of the Applicants for a full power station much more clearly satisfy the basic test of the public interest, because as a full power licensee on a channel to serve Tulsa they are obligated to provide at least some issue responsive programming, including local programming, to insure their renewal expectancy. *See, e.g., Seattle Public Schools*, 4 FCC Rcd 625, 65 RR2d 1621, 1635 (Rev. Bd., 1989); *Harriscop of Chicago, Inc.*, 5 FCC Rcd 6383, 68 RR2d 503 (1991). Indeed, all of the Applicants promise, in their applications, a robust and issue-responsive program service to serve Tulsa and the proposed service area. Moreover, not only will this promised service to be local and issue-responsive, it will be viewed over a much larger area, and serve many more communities, than would any program service broadcast by KLOT-LP. Accordingly, by any measure of calculating the public interest, the Applicants' promise and obligation when one of them becomes a licensee, to provide local issue-responsive programming trumps EBC's promise that "....content selection throughout the broadcast day is locally made."

13. Indeed, even EBC's claim about local "content selection" weakens somewhat when the "content selection" of which EBC brags requires no more than the payment of a fee by one viewer, whatever the desires of the remainder of the audience. It is hard to believe that music videos of any sort whose only claim to "local programming" is that they are chosen by a single



local resident willing to pay a fee should have some sort of precedence over a full service educational television station which has an obligation to produce local and issue responsive programming serving the needs of Tulsa and the service area. To prefer EBC's claim to that of the full service applicants for Tulsa stands the public interest standard, as well as the statutory purpose of the CPBA, on its head.

**Wherefore, the foregoing considered,** the above-identified applicants for NTSC channel 63 in Tulsa, Oklahoma respectfully request the Commission to reject KLOT-LP's bogus certification for eligibility for status as a Class A LPTV station, and permit the Applicants to file a rule making petition to allocate a full service DTV channel to Tulsa and permit the institution of full power issue responsive television service to Tulsa and the surrounding service area.

Respectfully Submitted,

By: 

Joseph E. Dunne III  
Attorney for Global Education Development, Inc.

Joseph E. Dunne III  
Law Offices of Joseph E. Dunne III  
P.O. Box 9203  
Durango, CO 81302-9203  
(970) 385-7312

INFORMAL OBJECTION

EXHIBIT A

VERIFIED STATEMENT OF KEVIN FISHER

### VERIFIED STATEMENT

I, Kevin Fisher, make the following statement under penalty of perjury of the laws of the District of Columbia and the United States of America.

1. I am a consulting engineer with the firm of Smith & Fisher located in Washington, D.C. My qualifications are well known to the Commission, and I have prepared hundreds of full power and low power television station applications as well as many petitions for rule making seeking to add new television channels to the Commission's Table of Allocations.
2. When the Public Notice of November 22, 1999 was published I was commissioned to study the spectrum available for full power television applicants now applying for channel 63 in Tulsa to petition to add a new channel or channels to serve Tulsa. My objective was to find at least two channels so that the applicants would have both an NTSC and DTV channel for which to apply.
3. My study showed that there is only one channel available to be allocated to Tulsa consistent with Commission rules. Even this channel may not be allocated to Tulsa without specific antenna site restrictions and restrictions on the allocation's operating parameters.
4. When the Commission published its Report and Order in MM Docket No. 00-10 (Class A Television Service) requiring NTSC applicants to protect the 74 dBu contour of Class A television stations I re-evaluated by earlier study based on the Class A certifications filed by LPTV licenses before January 28, 2000.
5. That study showed that even with the operating and site restrictions which my study showed were required, the facilities for which the Applicants could petition would entirely cover the 74 dBu contour of low power television station KLOT-LP, Tulsa, Oklahoma. These overlapping contours would create areas of interference within KLOT-LP's 74 dBu contour based on the d/u ratios computed using the Longley-Rice methodology.

Executed by me on this 24<sup>th</sup> of April, 2000.

  
Kevin Fisher

**INFORMAL OBJECTION**

**EXHIBIT B**

**PUBLIC NOTICE OF KLOT-LP CLASS A CERTIFICATION**



# PUBLIC NOTICE

Federal Communications Commission  
445 12th St., S.W.  
Washington, D.C. 20554

News media information 202 / 418-0500  
Fax-On-Demand 202 / 418-2830  
TTY 202 / 418-2555  
Internet: <http://www.fcc.gov>  
<ftp.fcc.gov>

97659

Released: February 8, 2000

## STATEMENTS OF ELIGIBILITY FOR CLASS A LOW POWER TELEVISION STATION STATUS TENDERED FOR FILING

On November 29, 1999, the Community Broadcasters Protection Act of 1999 was signed into law. That legislation provides that a low power television licensee may convert the secondary status of its station to the new Class A status, provided it can satisfy certain statutorily-established criteria.

To become eligible for a Class A certificate of eligibility, the licensee's station must, during the 90-day period ending November 28, 1999, have: (1) broadcast a minimum of 18 hours per day; (2) broadcast an average of at least three hours per week of programming produced within the market area served by the station or by a group of commonly-controlled low power television stations; and (3) been in compliance with the Commission's regulations applicable to the low power television service. In the event that a low power television licensee is not able to satisfy the foregoing criteria, the Commission is empowered by the legislation to issue a certificate of eligibility if it determines that the public interest, convenience and necessity would be served thereby. The legislation also provided that licensees intending to seek Class A designation file a certification of eligibility with the Commission no later than January 28, 2000.

Statements of Eligibility for Class A Low Power Television Station Status have been filed on or before January 28, 2000 by the entities listed in Attachment A.

KKJK-LP	66807 Las Vegas	NV	Thomas C. Griner	1/20/00
KKPM-LP	51930 Chico	CA	Paul Strieby & Matt Tuter/Partnership.	1/5/00
KKYK-LP	57545 Little Rock	AR	KKYK Channel 22, Inc.	12/2/99
KKYK-LP	57545 Little Rock	AR	KKYK Channel 22, Inc.	1/28/00
KLAF-LP	16537 Opelousas	LA	WNTZ-48, Inc.	1/28/00
KLCP-LP	54988 Las Cruces	NM	Prime Time Christian Broadcasting, Inc.	1/19/00
KLET-LP	33177 Lafayette	LA	K. Sandoval Burke	1/28/00
KLFI-LP	4585 Texarkana	AR	Beech Street Communications Corp.	1/20/00
KLGV-LP	28983 Longview	TX	International Broadcasting Network	12/20/99
KLMB-LP	38585 El Dorado	AR	Louisiana Christian Broadcasting, Inc.	1/27/00
KLNM-LP	30211 Lufkin	TX	Millennium Communications & Productions, Inc.	1/6/00
KLOT-LP	31369 Tulsa	OK	Equity Broadcasting Corporation	1/28/00
KLRA-LP	57548 Little Rock	AR	Kaleidoscope Foundation, Inc.	1/28/00
KLUF-LP	28937 Lufkin	TX	International Broadcasting Network	12/20/99
KMAH-LP	57130 Cheyenne	WY	Robert R. Rule, d/b/a Rule Communications	1/20/00
KMBA-LP	67614 Ontario	OR	Treasure Valley Community College	1/27/00
KMCF-LP	20559 Fresno	CA	Gary M. Cocola	1/28/00
KMMA-LP	58616 San Luis Obispo	CA	Caballero Television Texas, L.L.C.	1/28/00
KMMB-LP	18732 Bakersfield	CA	Caballero Television Texas, L.L.C.	1/28/00
KMON-LP	64024 Monroe	LA	Great Oats Broadcasting Corp.	1/17/00
KMPH-LP	51489 Merced-Mariposa	CA	Pappas Telecasting Incorporated	1/28/00
KMST-LP	43599 Salinas	CA	Monterey County Superintendent of Schools	1/27/00
KMUM-LP	18736 Sacramento	CA	Caballero Television Texas, L.L.C.	1/28/00
KNAV-LP	47898 Corsicana	TX	Navarro College	1/28/00
KNBN-LP	Rapid City	SD	Rapid Broadcasting Company	1/27/00
KNBX-LP	33819 Las Vegas	NV	Equity Broadcasting Corporation	1/28/00
KNCD-LP	28986 Nacogdoches	TX	International Broadcasting Network	12/20/99
KNCV-LP	73462 Carson City	NV	The Scotts Valley Group, Inc.	1/27/00
KNET-LP	3167 Los Angeles	CA	Atrium Broadcasting Company	1/27/00
KNIC-LP	48837 San Antonio	TX	Nicolas Communications Corporation	12/22/99
KNJD-LP	48527 Branson	MO	New Life Evangelistic Center, Inc.	1/28/00
KNJE-LP	48533 Eureka Springs	AR	Tv-34, Inc.	1/28/00
KNJE-LP	48533 Eureka Springs	AR	TV-34, Inc.	1/28/00
KNLA-LP	72270 Los Angeles	CA	White Sage Broadcasting Company	1/27/00
KNOV-LP	64048 New Orleans	LA	Beach TV Properties, Inc.	12/28/99

**INFORMAL OBJECTION**

**EXHIBIT C**

**CLASS A CERTIFICATION FILED BY KLOT-LP**

31369

IRWIN, CAMPBELL & TANNENWALD, P.C.  
ATTORNEYS AT LAW  
1730 RHODE ISLAND AVENUE, N.W.  
SUITE 200  
WASHINGTON, D.C. 20036-3101  
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COPY

RECEIVED

JAN 28 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

JASON S. ROBERTS  
(202) 728-0401 x128  
[jroberts@icipc.com](mailto:jroberts@icipc.com)

January 28, 2000

VIA MESSENGER

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554

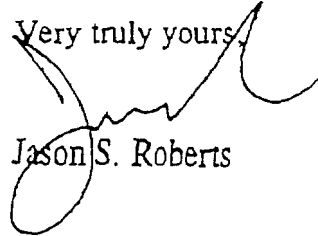
Re: Station KLOT-LP, Tulsa, Oklahoma  
Certification of Eligibility for LPTV Class A Designation

Dear Ms. Salas:

Transmitted herewith and filed on behalf of Equity Broadcasting Corporation, ("Equity"), licensee of LPTV Station KLOT-LP, Tulsa, Oklahoma (Facility ID No. 31369, the "Station"), pursuant to Section 336(f)(1)(B) of the Communications Act of 1934, as amended by the Community Broadcasters Protection Act of 1999 (the "1999 Act"), is an original signature by Equity on a certification of eligibility for the new Class A designation for the Station. This filing certifies the eligibility of the Station for the new Class A designation under the qualification requirements of Section 336(f), as required by the statute.

Any questions regarding this filing may be directed to the undersigned.

Very truly yours,

  
Jason S. Roberts

Enclosure

cc: Community Broadcasters Association



STATEMENT OF ELIGIBILITY  
FOR

CLASS A LOW POWER TELEVISION STATION STATUS

1. Legal Name of LPTV Licensee Equity Broadcasting Corporation		
Mailing Address #1 SHACKLEFORD DRIVE, SUITE 400		
City LITTLE ROCK	State or Country (if foreign address) AR	ZIP Code 72211
Telephone Number (include area code) (501) 219-2400		E-Mail Address (if available)

LPTV Station: Facility ID Number 31369 Call Sign KLOT-LP

Community of License: City Tulsa State OK

2. Contact Representative (if other than Licensee): Lori Withrow	Company or Firm Name: Equity Broadcasting Corporation
Telephone Number (include area code): (501) 219-2400	E-Mail Address (if available): lori@kkyk.com

3. For the 90-day period ending November 28, 1999, has the low power television licensee:

- a. broadcast a minimum of 18 hours per day? ☒ Yes ☐ No
- b. broadcast an average of 3 hours or more per week of programming produced within the market area served by the station or by commonly-controlled stations? ☒ Yes ☐ No
- c. operated its station in full compliance with 47 Code of Federal Regulations Section 74.701 et seq., the Commission's regulations applicable to low power television stations? ☒ Yes ☐ No


If the answers to Questions 3(a), (b), and (c) is YES, the LPTV licensee may submit this statement to obtain a certificate of eligibility for Class A LPTV station status.

If the answer to Question 3(a), (b), or (c) is NO, the LPTV licensee may submit an Exhibit, setting forth fully the extent to which its station does not meet the above eligibility criteria and the reasons nevertheless that warrant a Commission determination that issuance of a certificate of eligibility would serve the public interest, convenience and necessity.

Exhibit No.  
1

4. Does the LPTV licensee certify that neither the licensee nor any party to the licensee, as defined in 47 Code of Federal Regulations Section 1.2002(b), is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862? ☒ Yes ☐ No

5. Certification. I certify that I have examined this Statement and that, to the best of my knowledge and belief, all representations in this Statement are true, correct and complete.

Typed or Printed Name of Person Signing Terry A. Elliott	Typed or Printed Title of Person Signing Vice President
Signature 	Date 1/26/00

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Equity Broadcasting Corporation  
KLOT-LP, Tulsa, Oklahoma  
Class A Eligibility Certification

EXHIBIT 1

The certification that KLOT-LP carries three hours or more of locally produced programming per week is based on the Video Jukebox format, which involves music videos that are selected by local viewers who call and make their selection via telephone. Thus content selection throughout the broadcast day is locally made.

## CERTIFICATE OF SERVICE

I, Shari L. Atole, a paraprofessional in the Law Offices of Joseph E. Dunne III, hereby certify that on this 25<sup>th</sup> day of April I caused a copy of the foregoing "Informal Objection" to be sent by first-class United States mail, postage prepaid to the following:

Douglas Sheldahl  
Family Educational Broadcasting, Inc.  
P.O. Box 201  
Huxley, IA 50124

Robert L. Olender, Esq.  
Koerner & Olender, P.C.  
5809 Nicholson Lane, Suite 124  
North Bethesda, MD 20852


Stephen C. Simpson, Esq.  
Attorney at Law  
1090 Vermont Ave., Suite 800  
Washington, DC 20005

Bradford D. Carey, Esq.  
Hardy & Carey, L.L.P.  
111 Veterans Blvd., Suite 300  
Metairie, LA 70005

Rev. Carlos Ortiz  
Faith that Pleases God Church  
4501 West Expressway 83  
Harlington, TX 78552

Jason S. Roberts, Esq.  
Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Ave., NW  
Suite 200  
Washington, DC 20036-3101

Cary S. Tepper, Esq.  
Freret, Imlay, & Tepper Esq.  
5101 Wisconsin Ave., NW, Suite 307  
Washington, DC 20016-4102

  
\_\_\_\_\_  
Shari L. Atole

**PETITION FOR RULE MAKING  
DTV CHANNEL 63, TULSA, OK**

**EXHIBIT 3**

**EBC'S OPPOSITION TO INFORMAL OBJECTION**

COPY

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, DC 20554

In re Application of )  
 )  
**EQUITY BROADCASTING CORPORATION** )  
**(KLOT-LP, Tulsa, OK, Facility ID No. 31369)** )  
 )  
 Certification of Class A Eligibility )

To: Chief, Low Power Television Branch  
 Video Services Division, Mass Media Bureau  
**Mail Stop 1800E2**

**OPPOSITION TO INFORMAL OBJECTION**

1. Equity Broadcasting Corporation ("Equity"), licensee of low power television station KLOT-LP, Tulsa, Oklahoma (Facility ID No. 31369), hereby opposes the informal objection filed by Global Education Development, on behalf of itself and five other applicants for NTSC Channel 63 in Tulsa, Oklahoma (collectively, the "Applicants"). The objection must be dismissed for the following reasons: (i) there is no Class A application by KLOT-LP pending at this time against which any objection may lie; (ii) there is no applicant assured of a grant in the proceeding for the Channel 63 Tulsa allotment, and (iii) there is no showing that KLOT-LP's channel would be useful as a displacement channel for any full power permittee in Tulsa.

2. No Class A Application is Pending. Equity has filed only a certification that it is eligible to apply for a Class A authorization. Under the rules adopted in MM Docket No. 00-10,<sup>1</sup> Equity will have six months after the effective date of the new rules to file an application for a Class A license. Equity is under no obligation to file any such application and may or may not do so, depending on

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<sup>1</sup> *Establishment of a Class A Television Service*, Report and Order in MM Docket No. 00-10, FCC 00-115, released April 4, 2000 ("R&O"), at ¶13.

its evaluation of the benefits vs. the burdens of Class A operation. Unless and until an application is filed, there is no vehicle against which an objection may be lodged, and the Commission's resources would be wasted trying to evaluate the merits of an application that it has not seen and that may never be before it.

3. No Full Power Applicant Assured of Grant. Under Section 73.6011 of the Rules, adopted in the *R&O*, mutually exclusive full power TV stations are protected against Class A stations only if the full power applications have filed a settlement by November 29, 1999.<sup>2</sup> No settlement has been filed in the Tulsa case. Therefore, there is no applicant entitled to protection under the new rules.

4. No Showing of Need. The Applicants argue that because they have applied for Channel 63, which was reallocated to other services in ET Docket No. 97-157, they must move to Channel 51 or below, and they may seek a channel that would be mutually exclusive with KLOT-LP's operation on Channel 25. Even if the Applicants were entitled to some protection (which they are not), they have made no showing that KLOT-LP's Channel 25 would in fact be available to them if KLOT-LP were not present. Thus their claim is completely speculative, and they have not meet any burden of proof to show that they are in fact damaged.

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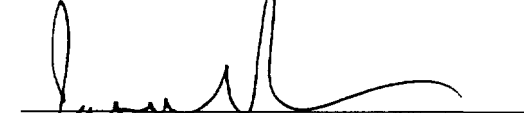
<sup>2</sup> The rules reflect the intent of Congress in the Community Broadcasters Protection Act of 1999 ("CPBA"). Congress specifically decided to protect existing Class A service over new full power service; it was not a discretionary decision by the Commission.

5. Conclusion. In light of the foregoing it is submitted that the claim of the Applicants is premature, speculative, and contrary to the CPBA and must be dismissed.

Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Ave., N.W., Suite 200  
Washington, DC 20036-3101  
Tel. 202-728-0400  
Fax 202-728-0354

May 8, 2000

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter Tannenwald', is written over a horizontal line.

Peter Tannenwald

Jason S. Roberts

Counsel for Equity Broadcasting Corporation

## CERTIFICATE OF SERVICE

I, Donna Brown, hereby certify that on this 8<sup>th</sup> day of May, 2000, I have caused a copy of the foregoing "Opposition to Informal Objection" to be sent by first-class United States mail, postage prepaid, to the following:

Joseph E. Dunne III, Esq.  
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Donna Brown



**PETITION FOR RULE MAKING  
DTV CHANNEL 63, TULSA, OK**

**EXHIBIT 4**

**APPLICANTS REPLY TO OPPOSITION**

GED

Joseph E. Dunne III  
Attorney at Law  
P.O. Box 9203  
Durango, CO 81302-9203

RECEIVED  
MAY 18 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

May 18, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W., Room TW-B204F  
Washington, D.C. 20554

RE: "Reply" to "Opposition to Informal Objection" Filed By Equity Broadcasting Corporation, Licensee of KLOT-LP, Tulsa, Oklahoma

Dear Ms. Salas:

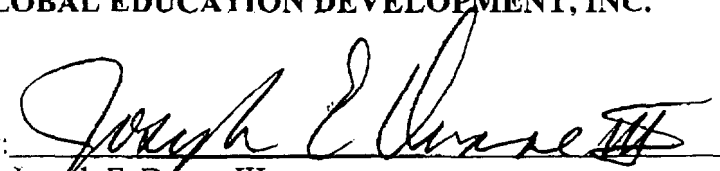
Transmitted herewith on behalf of six of the seven applicants for NTSC channel 63, Tulsa, Oklahoma ("the Applicants") is an original and four copies of a "Reply" to the "Opposition to Informal Objection" filed by the above-referenced LPTV licensee on May 8, 2000.

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully Submitted,

GLOBAL EDUCATION DEVELOPMENT, INC.

By:

  
Joseph E. Dunne III  
Its Attorney

JED:A43

Enclosure

xc: As Per Attached Certificate of Service  
Dr. George Sebastian

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

**In Re**

**Equity Broadcasting Corporation**

**Certification of Eligibility For Class A  
 Low Power Television Station Status**

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)  
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)

**TO: The Chief, Low Power Television Branch  
 Mass Media Bureau, Video Services Division  
 Mail Stop 1800E2**

**REPLY**

Broadcasting for the Challenged, Inc.; Faith That Pleases God Church; Family Educational Broadcasting, Inc.; Creative Educational Media Corporation, Inc.; Global Education Development, Inc.; and, Community Television Educators, Inc. (Jointly referred to as "the Applicants"), six of the seven pending applicants<sup>1</sup> for NTSC channel 63 in Tulsa, Oklahoma, by the undersigned counsel for Global Education Development, Inc., hereby submit this "Reply" to the "Opposition to Informal Objection" ("Opposition") filed by Equity Broadcasting Corporation (hereinafter referred to as "EBC") on May 8, 2000. As grounds for their Reply, the Applicants show and state as follows.

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<sup>1</sup> The file numbers of the respective applicants follow: Broadcasting for the Challenged, Inc. (BPET-960101KH); Faith That Pleases God Church (BPET-960101KE); Family Educational Broadcasting, Inc. (BPET-960927KE); Creative Educational Media Corporation, Inc. (BPET-960701KG); Global Education Development, Inc. (BPED-960917KE); and, Community Television Educators, Inc. (BPET-960903KG).

## **I. EBC Does Not Address The Issue of Whether It Filed A Bogus Class A Certification**

1. The central issue posed by the Applicants in their Informal Objection was whether EBC had submitted a bogus Class A certification because it admittedly did not comply with the criteria for Class A eligibility established by the Community Broadcasters Protection Act of 1999 ("CBPA") and codified at 47 U.S.C. section 336 (f) (1). EBC's Class A certification admitted that its certification was "...based on the Video Jukebox format, which involves music videos which are selected by local viewers who call and make their selection via telephone." See EBC Class A Certification in Exhibit C to the Informal Objection. Clearly programming which is locally chosen is not programming which is locally produced, which is the touchstone of requirements set by the CBPA for Class A status. In its Opposition EBC did not even deign to address this issue, so the Applicants' argument concerning compliance with the eligibility criteria established by statute, for the purposes of this pleading, must be considered to have been conceded by EBC.

## **II. Whether Or Not A Class A Application Is Pending Is Irrelevant To A Determination of Whether EBC Filed A Bogus Class A Certification**

2. As codified in 47 U.S.C. section 336(f)(1)(B), the CBPA provides, in pertinent part, that

...licensees intending to seek Class A designation shall submit to the Commission a certification of eligibility based on the qualification requirements of this subsection. Absent a material deficiency, the **Commission shall grant a certificate of eligibility to apply for Class A status.** (emphasis supplied)

Accordingly, by its own words Congress clearly intended the FCC to take some action in response to the certifications for Class A status filed by LPTV licensees, specifically, to grant such qualifying licensees a certificate of eligibility to apply for Class A status. Moreover,

responsible Commission staff members have publicly announced the Commission's intention to grant certificates of eligibility to those which filed Class A certifications in a timely manner.<sup>2</sup> The Applicants' Informal Objection was timely filed to prevent the Commission from granting such a certificate to EBC based on its bogus Class A certification. Without the certificate of eligibility EBC will not be able to file a Class A application. Accordingly, EBC's argument is as bogus as its certification because the Commission must act on its Class A certification before it can file the Class A application which it notes is not yet filed.

### **III. Whether The Applicants Are Individually Assured of A Grant Is Irrelevant To A Determination of Whether EBC Filed A Bogus Class A Certification**

3. EBC correctly points out that the Applicants when they filed their applications were not assured by the Commission that their applications would be granted, but surely, fundamental fairness and administrative regularity require that full service applicants which have invested substantial resources in filing applications long before Class A status was a gleam in the eye of the Community Broadcasters Association should be permitted the opportunity to provide their promised issue-responsive service instead of an LPTV applicant which filed a bogus Class A certification which neither complies with the letter or the intent of Congress in passing the CBPA or the FCC in adopting rules for the Class A service. Surely, in the scale of the public interest the Commission can weigh the public interest benefits promised by full power issue-responsive educational television service to Tulsa versus the public interest served by a low power television

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<sup>2</sup>. Remarks of Keith Larson, Assistant Chief, Engineering, of the Mass Media Bureau, at a meeting sponsored by the Community Broadcasters Association at the Convention of the National Association of Broadcasters in Las Vegas, Nevada, on April 10, 2000.

station which produces no local programming and which is not eligible for the protections provided Class A stations by statute.

#### **IV. Facts Contradict EBC's Claim That The Applicants' Damage is Speculative**

4. EBC argues that the Applicants have not shown that EBC's Class A certification causes them any harm, and that their claims of damage are "speculative." At the outset, this argument may be dismissed as wholly irrelevant. Informal Objectors are not required to show injury in order for their claim to be heard. Family Television Corp., 58 RR2d 1344 (1986) (petitioners could not show injury so petition could not stand as petition to deny, but it would be treated as an informal objection).

5. Secondly, whether the Applicants have suffered any injury, or whether their injury is "speculative" or not is wholly irrelevant to a consideration of the essential question posed by the Applicants' Informal Objection, did EBC's certification comply with the eligibility requirements established by statute so that it may be granted a certificate of eligibility to apply for Class A status? Injury or no, EBC clearly does not comply with the statute's eligibility requirements or the rules implementing the statute adopted by the Commission.

6. Finally, EBC's argument that the Applicants have not shown any injury, or that their claim of injury is "speculative" is not only irrelevant, it is also inaccurate. The Applicants have shown the that continued pendency of EBC's Class A certification will cause them serious damage. All the Applicants have invested substantial resources in preparing, filing and prosecuting their applications for NTSC channel 63. To be able to continue prosecuting the

applications in which they have already invested so much they must file a petition for rule making prior to July 15, 2000 to request the allocation of a core channel to Tulsa for which they may apply prior to the loss of channel 63 through an auction. The Applicants have submitted a Verified Statement from a qualified and respected consulting engineer which avers that the only facilities for which the Applicants may petition would "create areas of interference within KLOT-LP's 74 dBu contour based on the d/u ratios using Longely-Rice methodology." See Verified Statement of Kevin Fisher in Exhibit A to the Informal Objection. Since an applicant which has filed a Class A certification has its 74 dBu contour protected until the Commission has taken final action on its Class A certification, EBC's Class A certification will prevent the Applicants from filing a petition for Rule Making by July 15, or render the petition vulnerable to being dismissed soon after filing. The channel which the Applicants will petition the Commission to allocate is, effectively, the last chance for the Applicants, and EBC's bogus Class A certification clearly bars the way.

7. When the Commission comes to a final determination on EBC's Class A certification is certainly not known, and it is unlikely in the extreme, given the necessity for granting certificates of eligibility for Class A status and accepting the deluge of Class A applications which may be expected, not to mention with coping with the applications to be filed during the filing window opening on July 31, 2000, whether Commission will be able to take "final action" on EBC's Class A certification soon enough to remove the bar to the effective resuscitation of their applications in time. The Applicants certainly do face a serious and certain danger if EBC's bogus certification is not acted upon soon, to wit, the dismissal of the applications in which the Applicants have already invested so many resources. Moreover, the public faces the loss of the

Applicants' promised full service and issue-responsive educational service if the Commission does not act on its Informal Objection soon.

**Wherefore, the foregoing considered,** the above-referenced applicants for NTSC channel 63 in Tulsa, Oklahoma, respectfully request the Commission to reject EBC's bogus certification for eligibility for status as a Class A LPTV station, refuse to grant EBC a certificate of eligibility of to apply for Class A status, and allow the Applicants identified herein to file a rule making petition to allocate a full service DTV channel to Tulsa and permit the institution of full power issue-responsive educational television service to Tulsa and the surrounding service area.

Respectfully Submitted,

By: 

Joseph E. Dunne III  
Attorney for Global Education Development, Inc.

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P.O. Box 9203  
Durango, CO 81302-9203  
(970)385-7312



**CERTIFICATE OF SERVICE**

I, Shari Lynn Atole, a paralegal in the Law Offices of Joseph E. Dunne III, hereby certify that I have mailed a copy of the foregoing "Reply " on this 18th day of May, 2000, first-class postage prepaid, to the following:

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Shari Lynn Atole